the court has not implied that such criterion does away with the latitude which is essential for the proper handling of special cases. It truly observes that there can be no such thing as true monetary compensation for the loss of an eye. What, in an ordinary case, then, is fair? An average of the opinions of many courts is, to say the least, not a bad criterion. Finding that the jury in this case has awarded three times that average, and knowing that the jury has heard prejudicial argument, the original verdict was cut—not by two-thirds—but by one-third only. We think the court eminently justified.

T. L. P.

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INDEPENDENT CONTRACTOR—CORPORATION NOT LIABLE FOR NEGLIGENCE OF PHYSICIAN EMPLOYED BY IT.—In the recent Virginia case of *Virginia Iron, Coal & Coke Co.* v. *Odle*,[1] the question arose as to the liability of a corporation for the negligence of a physician whom it employed. In that case the corporation deducted, from the wages of each of its employees, a sum in consideration of which, any sick or injured employee was entitled to the services of a physician free from any further charge. The corporation did not make any profit from this transaction. The court held that the physician was an independent contractor, and the corporation was not liable for his negligence, but was only bound to use ordinary care in the selection and retention of the physician.

It is well settled that a physician is an independent contractor,[2] but the liability of a corporation is dependent upon different sets of facts. When the services of a physician are furnished as a pure gratuity the master is only liable for the use of ordinary care in selecting him.[3] Also when the sum deducted from the wages of its employees is paid in full to a physician of its own selection, the corporation is only liable for ordinary care in his selection.[4] By the weight of authority the same duty rests upon the corporation when no profit or expectation of profit is derived from a fund obtained by deductions from the wages of its employees.[5] Pertaining to the question of ordinary care, it has been held that where a case necessitates two physicians, ordinary

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[1] 105 S. E. 107.

[2] Union Pacific R. Co. *v.* Artist, 60 Fed. 365, 23 L. R. A. 581.

[3] Quinn *v.* Kansas City, etc., R. Co., 94 Tenn. 713, 30 S. W. 1036, 28 L. R. A. 552, 45 Am. St. Rep. 767.

[4] Wells *v.* Ferry-Baker Lumber Co., 57 Wash. 658, 107 Pac. 869, 29 L. R. A. (N. S.) 426.

[5] Big Stone Gap Iron Co. *v.* Ketron, 102 Va. 23, 45 S. E. 740, 102 Am. St. Rep. 839; Arkansas, etc., R. Co. *v.* Pearson, 98 Ark. 399, 135 S. W. 917, 34 L. R. A. (N. S.) 317; Poling *v.* San Antonio, etc., R. Co., 32 Tex. Civ. App. 487, 75 S. W. 69; Congdon *v.* Louisiana Sawmill Co., 143 La. 209, 78 So. 470. But see Phillips *v.* St. Louis, etc., R. Co., 211 Mo. 419, 111 S. W. 109, 17 L. R. A. (N. S.) 1167, 124 Am. St. Rep. 786, 14 Ann. Cas. 742.

care requires that two be provided, and a corporation is liable for negligence in only providing one.[6] It is also well settled by another line of decisions that when the deductions from the wages of its employees exceed the amount expended in the care of its sick and injured employees, the corporation is liable for the negligence or malpractice of the surgeons employed by it.[7] From an inspection of the authorities it appears that Virginia is well in line with the majority of the courts of this country.

A. W. H. T.

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CONFLICT OF LAWS—STATUTE OF FRAUDS—VA. CODE, § 5561. —The substance of § 5561, subsec. 6 of the Virginia Code, is that *no action shall be brought* upon any contract for the sale of real estate, or for the lease thereof for a longer time than one year, unless the promise, contract, agreement, etc., or some memorandum or note thereof be in writing and signed by the party to be charged or his agent. This clause is for all intents and purposes a re-enactment or adoption of part of the famous Fourth Section of the English Statute of Frauds under which so many interesting cases have arisen. We present here a problem of general interest arising under this statute on which there is naught but scant and conflicting authority.

A, domiciled in a foreign State, owns land in Virginia. While occupying his Virginia estate he receives a verbal offer for its purchase and verbally accepts such offer. Later he repudiates the contract and returns to his domicil. Supposing the land to have greatly enhanced in value, or the offerer to have been damaged by the refusal to sell (but not in such manner that relief could be obtained in equity), what is the remedy of the would-be purchaser?

The contract created by the offer and acceptance is clearly nonenforceable and remediless in Virginia, but the question at once arises, could there be an action for damages at the domicil of the owner for breach of a personal contract? If there be a corresponding Statute of Frauds (*no action shall be brought*) in the domicil of the owner there is clearly no remedy in the courts of that State, but how if oral contracts for the transfer of land are upheld in that State? Again, how if the law of the owner's domicil declares such oral contracts absolutely void?

In the case of *Dupuy v. Delaware Ins. Co.*,[1] the United States District Court for the Western District of Virginia lays down the doctrine that a contract for the sale of Virginia land not evidenced by writing is not void but *is voidable* at the option of one

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[6] Nations *v.* Ludington, etc., Co., 133 La. 657, 63 So. 257, Ann. Cas. 1916B, 471.

[7] Texas & Pacific Coal Co. *v.* Connaughton, 20 Tex. Civ. App. 642, 50 S. W. 173; Sawdey *v.* Spokane Falls, etc., R. Co., 30 Wash. 349, 70 Pac. 972, 94 Am. St. Rep. 880.

[1] 63 Fed. 680.